IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Shiv Singh Rathore
Vs.
The State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.5560/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

The petitioner has preferred this writ petition against the orders Annexure-3 and consequential order Annexure-4 both dated 19th August, 2002 by which the respondents have

revised his pay scale and made consequential deductions.

The facts of the present case are that the petitioner was initially appointed as Teacher Gr.III in the pay scale of Rs.50-80 vide order dated 04th July, 1962. He was thereafter appointed as Teacher Gr.II through direct recruitment w.e.f. 16th October, 1973 and his salary was fixed at Rs.160/- per month. His pay scale was latter revised in the year 1976 to Rs.450-770 and this pay scale was further revised to Rs.625-1120 in the year 1981. Consequent upon revision of pay it was further revised to the pay scale of Rs.1140-2250 and the pay of the petitioner was fixed at Rs.1640/- in that scale on 01st September, 1986. One annual grade increment was allowed to the petitioner and his pay was fixed at Rs.1680/- on 16th October, 1986. The petitioner was promoted on the post of Teacher Gr.I (Lecturer) on 30th December, 1986 and consequently was fixed at Rs.1760/- in the pay scale of Rs.1490-3050/-. It is submitted that the existing employees were entitled to get jump of three additional increments upon reaching the stage of Rs.1800/- and were entitled to be fixed at Rs.1960. When the petitioner reached at that stage, the pay

scale of the petitioner was fixed at Rs.1960/- on 16th October, 1988. The petitioner on attaining the age of superannuation retired from government service on 31st March, 2001. At that time he was running in the pay scale of Rs.6500-10,500 and his basic was Rs.9300/-. It was on this basis that his pension case, gratuity and computation was to be finalized. It appears that the Pension Department raised certain objections and on that basis, District Education Officer, Nagour called for explanation/information from Principal, Government Higher Secondary School, Degana by his letter dated 17th February, 2001. Objection of the pension department was that the benefit of the jump was wrongly allowed to the petitioner in the year 1988 because he was not an existing employee in the pay scale of Rs.1490-3050 which was introduced w.e.f. 01st September, 1986, as he entered the pay scale as a consequence of his promotion on 30th December, 1986. It was thereafter directed that the benefit of jump allowed to the petitioner on 16th October, 1988 be withdrawn and as a consequence of this re-fixation basic pay was fixed at Rs.8700/- per month on 31st March, 2001 on the pay of which

the petitioner retired. A sum of Rs.63,285/- was recovered from the retiral dues of the petitioner as the amount alleged to have been paid in excess and this affected the pension amount of the petitioner also.

I have heard Mr.Harish Purohit, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy. Government Advocate and perused the record.

It would be evident from the records that the benefit of jump was required to be given to all those employees w.e.f. 01st September, 1986 who were in existing pay scale of Rs.1490-3050. The petitioner on that date was not an existing employee in the said scale. He was at that time working on the post of Teacher Gr.III and his pay was fixed at Rs.1640/- in the pay scale of Rs.1640-2250 which too had come into existence by way of revision of earlier pay scale at Rs.625-1120 w.e.f. 01st September, 1986. The petitioner entered in the pay scale of Rs.1190-3050 only upon his promotion on the post of Teacher Gr.I (Lecturer) vide order dated 30th December, 1986 much after 01st September, 1986. His pay fixation was thus erroneously made by giving the benefit of jump. No fault

therefore can be found in the action of the respondents in seeking to rectifying the mistake.

Adverting now to the question with regard to recovery of the amount of Rs.63,285/- said to have been paid in excess to the petitioner. It is trite law that if over payment has been made to a government servant by the department owing to its own fault and wrong pay fixation or wrong interpretation of any such rules and not because of any misrepresentation or fault on the part of such government servant, the government although may rectify the mistake but cannot be allowed to recover such over payment.

In the result, the writ petition is partly allowed while the action of the respondents in rectifying the mistake of wrong pay fixation consequent upon grant of benefit of jump is upheld. The recovery in the sum of Rs.63,285/- is set aside. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-